

(b) no extension of credit by defendants allowing partial payments for a period of time is required for a violation of Section 50(a)(6)(L)(I) of the Texas Constitution.

Plaintiff's argument that the defendants violated Section 50(a)(6)(L)(I) is premised upon her allegation that "in 2009 and 2010, GMACM ... agreed to accept and in fact accepted periodic installments from plaintiff of \$875, less than monthly, in amounts which were not substantially equal to the successive periodic installments due under the Texas Home Equity Note of \$1,426.44."

The Magistrate Judge properly concluded that "Plaintiff fails to allege facts that would support a plausible violation of Section 50(a)(6)(L)(I)." Plaintiff urges that "[a]ll that is required for a violation of Section 50(a)(6)(L)(I) is a change in the agreed installment payments which would not have been permissible when the loan originated." Plaintiff cites no authority to support this reading of Section 50(a)(6)(L)(I). A review of section 50(a)(6) illustrates that it only applies to "extensions of credit." Because plaintiff does not allege that the original loan violated Section 50(a)(6)(L)(I), the only possible "extension of credit" upon which her Section 50(a)(6)(L)(I) claim could stand would be a formal permanent loan modification. Plaintiff alleges no facts showing that her loan was actually modified, and the Magistrate Judge properly recommended dismissal of her claim.

Plaintiff also objects to the Magistrate Judge's reliance upon *Pennington v. HSBC Bank USA, N.A.*, No. A-10-CA-785 LY, 2011 WL 6739609 (W.D. Tex. Dec. 22, 2011). The Magistrate Judge relied upon the text of the Texas Constitution and found that *Pennington* was persuasive authority. The Court finds no error.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by plaintiff [Doc. #24], as well as defendants' response to plaintiff's objections [Doc. #26], this Court is of the opinion that the findings and conclusions of the Magistrate

Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendants' Rule 12(b)(6) Motion to Dismiss Plaintiff's Second Amended Complaint [Dkt. #16] is **GRANTED** in part and **DENIED** in part. Plaintiff's second request for declaratory relief that defendants violated Article XVI, Section 50(a)(6)(L)(I) of the Texas Constitution is dismissed.

So **ORDERED** and **SIGNED** this **30** day of **July, 2012**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge